

SENATE RECORD VOTE ANALYSIS

106th Congress
2nd Session

Vote No. 281

October 25, 2000, 5:40 p.m.
Page S-10985 Temp. Record

UTE INDIAN WATER RIGHTS/Changes to the Compromise Language

SUBJECT: A bill to amend the Colorado Ute Indian Water Rights Settlement Act of 1988 . . . S. 2508. Feingold amendment No. 4326 to the Campbell substitute amendment No. 4303.

ACTION: MOTION TO TABLE AGREED TO, 56-34

SYNOPSIS: As reported, S. 2508, a bill to amend the Colorado Ute Indian Water Rights Settlement Act of 1988, will authorize the Secretary of the Interior, in order to settle the outstanding claims of the Ute Indian tribes on the Animas and La Plata Rivers in Colorado, to construct a scaled-back version of the water supply project (the Animas La Plata (ALP) project) that has been authorized for those tribes and surrounding communities but which has been delayed due to Federal agency actions and due to judicial actions by environmentalists. The Clinton/Gore Administration has opposed the ALP project, but supports the scaled-back version that will be authorized by this bill, and which was developed by the Ute Indian tribes and other affected parties.

The Campbell substitute amendment would make changes agreed to by the bill managers.

The Feingold amendment would make four changes to the Campbell amendment. First, it would deauthorize the original ALP project (the bill will bar funding for any part of the original project without an express new authorization, unless construction of the scaled-back project is blocked). Second, it would make non-tribal water users reimburse the Federal Government for 100 percent of any recreation construction costs, and it would make fish and wildlife mitigation costs reimbursable joint costs. Third, it would make non-tribal users who prepaid their shares of the construction costs liable for any additional construction costs once the project was completed (the substitute amendment will only hold them liable for reasonable and unforeseen costs). Fourth, it would add that "Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary [of Interior] or any other Federal official under applicable laws, to restrict the availability or scope of judicial review, or to in any way affect the outcome of judicial review of any decision based on such analysis."

Debate was limited by unanimous consent. After debate, Senator Campbell moved to table the Feingold amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

(See other side)

YEAS (56)			NAYS (34)		NOT VOTING (10)	
Republicans (40 or 85%)		Democrats (16 or 37%)	Republicans (7 or 15%)	Democrats (27 or 63%)	Republicans (7)	Democrats (3)
Abraham	Inhofe	Baucus	Chafee	Bayh	Ashcroft ²	Akaka ²
Allard	Kyl	Bingaman	Collins	Biden	Burns ²	Feinstein ²
Bennett	Lott	Breaux	Fitzgerald	Boxer	Frist ²	Lieberman ²
Bond	Lugar	Conrad	Jeffords	Bryan	Grams ²	
Brownback	Mack	Daschle	McCain	Byrd	Roth ²	
Bunning	McConnell	Dorgan	Snowe	Cleland	Gorton ^{2AY}	
Campbell	Murkowski	Hollings	Specter	Dodd	Helms ^{2AY}	
Cochran	Nickles	Inouye		Durbin		
Craig	Roberts	Johnson		Edwards		
Crapo	Santorum	Kerrey		Feingold		
DeWine	Sessions	Landrieu		Graham		
Domenici	Shelby	Lincoln		Harkin		
Enzi	Smith, Bob	Miller		Kennedy		
Gramm	Smith, Gordon	Moynihan		Kerry		
Grassley	Stevens	Murray		Kohl		
Gregg	Thomas	Torricelli		Lautenberg		
Hagel	Thompson			Leahy		
Hatch	Thurmond			Levin		
Hutchinson	Voinovich			Mikulski		
Hutchison	Warner			Reed		
				Reid		
				Robb		
				Rockefeller		
				Sarbanes		
				Schumer		
				Wellstone		
				Wyden		

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Water is extremely scarce in the West. There is little precipitation, and 85 percent or more of water needs throughout the year must be met by water that has been stored. Due to careful distribution of scarce water supplies, though, once-arid land has been made fertile, and towns and cities have grown and flourished. The Federal Government, by funding large water projects across the West, has played a principle role in this development. In 1956 it began feasibility studies for, and in 1968 it authorized, one such project, the Animas La Plata (ALP) project. Other projects that were authorized at the same time have long since been completed. However, by the time the Government had completed planning for the ALP project in 1988 and was ready to begin construction, environmental extremists had decided that they did not like Federal water projects. Construction started in 1991, but was quickly stopped by environmentalists through a series of harassing legal actions. The Clinton/Gore Administration also worked to kill the project. The Fish and Wildlife Service (FWS) was especially active in throwing up roadblocks, eventually proclaiming that, for environmental reasons, only half as much water as planned, 57,000 acre feet per year, could be safely taken for the ALP. Approximately one-third of the water for the original ALP plan was to satisfy Ute Indian water rights dating back, by treaty, to 1868. The Ute Indians had filed suit to enforce those rights, but they agreed to drop their suit in return for cash payments and one-third of the water from the ALP.

In an effort to gain the support of the Clinton/Gore Administration, the Ute Indians, the affected State governments (Colorado and New Mexico), and the local communities that would use the water developed a scaled-down version of the plan. Under the new plan, only 57,000 acre feet of water per year would be stored, two-thirds of which would go to the Ute Indians and one-third of which would go to other users. Non-Indian users agreed to give up a great deal of their rights under existing law in order to ensure that, finally, the United States would honor its treaty obligation to the Ute Indians. The plan, as set forth in this bill, also includes provisions that should work to discourage new legal delays. The Administration has agreed to support the plan, including that it has agreed to support it as it has been set forth in this bill. We think that it is disgraceful that this "compromise" proposal had to be developed at all. It should not be possible to engage in endless judicial delays by filing baseless lawsuits, and we should not have Federal agencies that work in tandem with people who file such suits to undermine the law.

With this history as background, we now turn to the Feingold amendment, which has been supposedly offered to benefit the taxpayers and the environment. Regardless of the supposed intent, the effect of this amendment would be to kill the compromise agreement. First, the amendment would deauthorize the original ALP. The bill, in contrast, will forbid the construction of any part of the ALP without an express new authorization from Congress, but only if the compromise plan is blocked. The difference is critical. Under current law, if the project is not built by January 1, 2000, the Ute Indians will have 5 years to sue the United States to make it honor its treaty obligation by building the original project. The bill thus will keep the threat of court action by the Ute Indians to force construction of the whole project if efforts are made to delay construction of the compromise project, but the Feingold amendment would remove this threat, and thus encourage new delaying actions. The next two parts of the Feingold amendment would punish non-Indian users for their willingness to give up so much in return for getting a project to help the Ute Indians. It would make those users pay recreation and environment costs that other water users on other projects in the West have not had to pay, and it would make them open to unlimited, open-ended costs (the bill limits them to paying additional costs only if they are unexpected and reasonable). These two parts of the amendment would encourage extremists to run up costs to make the water unaffordable for non-Indian users. Also, the recreation facility that will be built is in Colorado, and some of the water users are in New Mexico--is it fair to make New Mexico water users pay for a facility in another State? The final part of the amendment would add language saying that nothing in this bill will restrict the right for judicial review. That language is unnecessary because it is true. However, by adding it, the implication is made that the scaled-down plan, which has already passed all of the required environmental reviews, has not yet been examined and should be delayed while more reviews are done.

Our colleagues tell us that they only want to make sure that non-Indian users pay their fair share of the costs and that the environment is protected. Regardless of any intent they may have, their amendment would have the effect of killing the scaled-back plan. It is completely unacceptable to the Ute Indians and to the surrounding communities who have already given up so much. This amendment would just drive the whole process back into the Federal courts. We strongly oppose this amendment.

Those opposing the motion to table contended:

We have a treaty obligation to provide water to the Ute Indians. We must meet that obligation and pay for it with Federal funds. However, we do not have a treaty obligation to provide water to neighboring, non-Indian communities at the same time. The Federal Government has built many large water projects over the years in the West. Those projects are now very controversial because of their expense and because of the environmental damage that they cause. Over the years, restrictions to limit Federal costs and to prevent environmental damage have become appropriately tighter. Our colleagues, though, want us to use old standards for the non-Indian costs of this reduced project. They do not want local water users to pay for construction cost overruns, and they do not want them to pay for costs for making recreation facilities or for protecting the environment. We think they should be held responsible for such costs. We also believe that we need to deauthorize the plan for the original project, which would damage the environment, in order to prevent any further efforts to build it, and we need to add language to this bill to ensure that in building the smaller, compromise project, all existing legal rights to ensure environmental compliance will be retained. The Feingold amendment addresses all of these points. We urge our colleagues to accept it.